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OFFICE OF PETITIONS

Director of Technology Center 2100
Commissioner for Patents
Washington, D.C. 20231

Attn: Art Unit 2162
Patent Examiner Jeffrey D. Carlson

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MAY 29 2002

Re: Application Serial No.: 09/233,249
Applicant: Harold V. Putman
Title: Automated Transaction Machine And Method
Docket No.: D-1086

GROUP 3600

Sir:

Please find enclosed Applicant's Petition that an Examiner's Answer contains an impermissible new ground of rejection for filing in the above-referenced application. Pursuant to 37 C.F.R. § 1.181, no fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with this Petition and any other fee due to Deposit Account 09-0428 of InterBold.

Very truly yours,

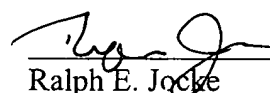


Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Director of Technology Center 2100, Commissioner for Patents, Washington, D.C. 20231 this 20th day of May 2002.

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D-1086

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
Harold V. Putman)	Art Unit: 2162
)	
Serial No.: 09/233,249)	Patent Examiner
)	Jeffrey D. Carlson
Filed: January 19, 1999)	
)	
For: Automated Transaction Machine)	
And Method)	

Director of Technology Center 2100
Commissioner for Patents
Washington, D.C. 20231

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OFFICE OF PETITIONS

Sir:

**PETITION THAT AN EXAMINER'S ANSWER CONTAINS AN
IMPERMISSIBLE NEW GROUND OF REJECTION**

Appellant respectfully petitions that the Examiner's Answer in the above referenced application contains an impermissible new ground of rejection. 37 CFR § 1.193(a)(2) clearly prohibits the entry of a new ground of rejection in an Examiner's Answer. Therefore, Appellant respectfully requests that the Examiner's Answer be withdrawn.

On page 11, lines 9-18, the Examiner's Answer states that a newly acquired document entitled "Extensible Markup Language (XML)" provides evidence of the date of a previously cited Bosak Internet publication. Although the Examiner's Answer correctly admits that the new document is not prior art, the Examiner's Answer goes on to argue that the Extensible Markup

Language (XML) document indicates that Bosak's March 1997 article entitled "XML, Java, and the Future of the Web" was presented at a First XML Conference in San Diego, CA.

The facts show that the Final Action ("Action") dated October 19, 2001 specifically applied the Bosak reference as a prior art publication for purposes of rejecting claims 1-44, 50, and 52-56 under 35 U.S.C. § 102(b) and the 35 U.S.C. § 103(a). Appellant's Appeal Brief argues against the assertion that the Bosak reference is a prior art publication. Appellant's argument was based on the Office's interpretation of the Bosak reference as a publication in the Action and from which the appeal was taken. Therefore, it is respectfully submitted that this new interpretation of Bosak as a prior art presentation or public use by the Office constitutes an impermissible new ground of rejection. Under 37 CFR § 1.193(a)(2) the entry of a new ground of rejection in an Examiner's Answer is clearly prohibited.

In addition, although the Examiner asserts that he is not relying on the teachings of the new document as part of any art rejection, the inclusion of the argument in the Examiner's Answer that the Bosak material was presented at the San Diego conference nevertheless is a new ground of rejection. Furthermore, a reference merely cited for the first time in an Examiner's Answer generally will constitute a new ground of rejection (MPEP § 1208.01). Appellants respectfully submit that the manner in which the new document and alleged Bosak presentation was cited, discussed, and/or apparently applied clearly constitutes an impermissible new ground of rejection within the meaning of 37 CFR § 1.193(a)(2) which clearly prohibits the entry of a new ground of rejection in an Examiner's Answer. Therefore the citation, discussion, and/or apparent application of the new document and alleged Bosak presentation in the Examiner's

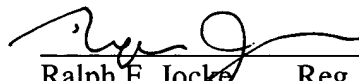
Answer is legally improper due to noncompliance with the clear wording of both the statute and the regulations and the Office procedures promulgated thereunder.

Conclusion

Appellant respectfully submits that the Examiner's Answer contains at least one impermissible new ground of rejection within the meaning of 37 CFR § 1.193(a)(2) which clearly prohibits the entry of a new ground of rejection in an Examiner's Answer. Appellant respectfully requests that the Examiner's Answer be withdrawn. Appellant respectfully requests that his petition be granted.

The undersigned will be happy to discuss any aspect of the Application by telephone at the Examiner's convenience.

Respectfully submitted,



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